

# EXHIBIT 6

1	UNITED STATES DISTRICT COURT	
	MIDDLE DISTRICT OF TENNESSEE	
2	-----x	
	L.E., by his next friends	
3	And parents,	*
4	Plaintiff,	*
5	V.	*
6	BILL LEE, in his official	*
	Capacity as Governor of	
7	Tennessee; PENNY SCHWINN,	*
	In her official capacity as	
8	The Tennessee Education	*
	Commissioner; TENNESSEE	
9	STATE BOARD OF EDUCATION;	*
	SARA HEYBURN MORRISON in	
10	Her official capacity as	*
	The executive Director of	
11	The Tennessee State Board	*
	Of Education; NICK DARNELL	
12	MIKE EDWARDS ROBERT EBY	*
	GORDON FERGUSON, ELISSA,	
13	KIM LILLIAN HARTGROVE,	*
	NATE MORROW, LARRY JENSEN	
14	DARRELL COBBINS, and EMILY	*
	HOUSE, the individual	
15	Members of the Tennessee	*
	State Board of Education,	
16	In their official	*
	Capacities; KNOX COUNTY	
17	BOARD OF EDUCATION a/k/a	*
	KNOX COUNTY SCHOOLS a/k/a	
18	KNOX COUNTY SCHOOL	*
	DISTRICT; ROBERT M. "BOB"	
19	THOMAS, in his Official	*
	Capacity as Director of	
20	Knox County Schools,	*
21	Defendants.	*
	-----x	

DEPOSITION OF SARA MORRISON  
APPEARING REMOTELY FROM  
NASHVILLE, TENNESSEE

August 22, 2022

11:00 a.m.

REPORTED BY:

Dawn L. Halcisak, CLR

APPEARING REMOTELY FROM CRISFIELD, MARYLAND

R E M O T E     A P P E A R A N C E S

ON BEHALF OF PLAINTIFF KNOX COUNTY BOARD OF

EDUCATION AND BOB THOMAS:

JESSICA JERNIGAN-JOHNSON, ESQUIRE

KNOX COUNTY LAW DIRECTOR'S OFFICE

(865) 215-2327

jessica.johnson@knoxcounty.org

SASHA BUCHERT, ESQUIRE

(pro hac vice forthcoming)

LAMBDA LEGAL DEFENSE AND EDUCATION

FUND INC.

1776 K Street, N.W., 8th Floor

Washington, D.C 20006

(202) 804-6245

sbuchert@lambdalegal.org

1 R E M O T E A P P E A R A N C E S (Cont'd.)

2  
3 ON BEHALF OF L.E., by his next friends and  
4 parents SHELLEY ESQUIVEL and MARIO ESQUIVEL  
5 & ACLU OF TENNESSEE:

6 STELLA YARBROUGH, ESQUIRE (No. 33637)

7 P.O. Box 120160

8 Nashville, Tennessee 37212

9 (615) 320-7142

10 syarborough@aclu-tn.org

11  
12  
13 WilmerHale LLP

14 Alan Schofield, Esquire

alan.schofield@wilmerhale.com

15 1875 Pennsylvania AV

Washington, DC 20001

16 628-235-1000  
17  
18  
19  
20  
21

R E M O T E   A P P E A R A N C E S (Cont'd.)

ALSO PRESENT:

FOR KNOX COUNTY LAW DIRECTOR'S OFFICE:

Bob Thomas, Director of Knox County Schools  
Coach Donald Dodgen

ATTORNEY GENERAL'S OFFICE:

Anne Levit

Mr. Swaine

Executive Director Morrison

State Board Members

Veda Newman, Law Clerk

Lucas Cameron-Vaugh, ACLU

VERITEXT:

Jerry CUrran, Concierge Tech

I N D E X

Name of Witness	Page
SARA MORRISON	
Examination	
MR. SCHOENFELD	6

E X H I B I T S

(Premarked for Identification and  
attached to the Transcript.)

Exhibit	Page
No. 1 Notice of Deposition	7
No. 2 Meeting Adgenda, 07/22/22	7
No. 3 Interscholastic Athletics Rule 0520-01-23 Cover, 07/22/22	7
No. 4 TN Policy Cover Email	7
No. 5 SEAD Scan Wraparound TDOEF	7
No. 6 Tennessee Teacher Code of Ethics, 081619	7
No. 7 State BOE Response to First Wave ROGs	7
No. 8 State BOE Response to First Wave RFPs	7

1           A.     I do.

2           Q.     Okay. Are you prepared to testify on  
3 each of the 18 topics that are listed in the  
4 deposition notice?

5           A.     I am.

6           Q.     Okay. So could you state, for the  
7 record, what your current position is?

8           A.     Yes. My current position is executive  
9 director for the Tennessee State Board of  
10 Education.

11          Q.     And what are your job responsibilities?

12          A.     In this role, I have a staff of  
13 individuals who support our Board. The  
14 governor-appointed members of the state board,  
15 who come together, at least quarterly, to vote  
16 on K12 policies and rules in Tennessee.

17          Q.     What sort of support do you and your  
18 staff derive for the Board?

19          A.     Well, in addition, to putting together  
20 the meeting agendas and ensuring that members  
21 have access to material and feel fully prepared



1 on the issues on which they will be asked to  
2 vote at each meeting, we also do our best to  
3 send newsletters to stakeholders to -- to -- in  
4 many cases, have public hearings for rules that  
5 are in promulgation.

6 I mentioned early, we also maintain a  
7 staff of attorneys who are responsible for  
8 licensure disciplinary cases in Tennessee.

9 We have a team that also is solely  
10 focused on policy and research. So there's a  
11 number of different research reports that some of  
12 our staff members put together to support our  
13 Board and their understanding of K12 nationally  
14 and in Tennessee.

15 So it runs the gamut, in terms of our  
16 staff. I'm happy to talk, in more specifics, if  
17 you have questions.

18 Q. How many staff members do you have?

19 A. It's always changing. Currently, we  
20 have 15, and we've got an open position, which  
21 was added after this last session that we're

1           A.     Correct.

2           Q.     What skills did playing sports teach  
3     you?

4           A.     They taught me discipline and  
5     responsibility, teamwork, among other things.  
6     But those are the three that stand out.

7           MS. BERMEYER:   And I'm going to state  
8     an objection, for the record, to the line of  
9     questioning that's personal in nature as outside  
10    the scope of the 30(b)(6).

11          MR. SCHOENFELD:   Well, she's also being  
12    deposed in her personal capacity, correct?

13          MS. BERMEYER:   Correct.   So I just want  
14    to make sure when the questions are for her  
15    official capacity instead of the 30(b)(6) that's  
16    it's clear for the record what her responses go  
17    for.

18    BY MR. SCHOENFELD:

19          Q.     And you said you didn't play any sports  
20    in college, correct?

21          A.     Correct.

1           Q.    Okay. Did you coach any sports when  
2           you were teaching either in Brentwood or  
3           Louisville?

4           A.    I did. I coached cross-country in  
5           Brentwood.

6           Q.    Why did you decide to coach  
7           cross-country?

8           A.    It was less of a decision and more of a  
9           requirement, as a new teacher.

10          Q.    Do you have any understanding of why it  
11          was a requirement as a new teacher?

12          A.    Well, my understanding is that they've  
13          got a lot of sports that they need coaches for,  
14          and when you've new teachers, that's often one  
15          of the expectations is that you, you know, agree  
16          to coach or sponsor an activity at the school to  
17          support the overall working of the -- the  
18          school.

19          Q.    Has your professional work in  
20          educational leadership or administration  
21          involved anything relating to interscholastic

1 sports?

2 A. Since -- since my career as a teacher?

3 Q. Yeah. In the, sort of -- from the  
4 governor's office forward, have any of your  
5 responsibilities related to interscholastic  
6 sports?

7 A. No -- I mean, the exception being that  
8 we make rules, as you know, on things like the  
9 law in question. But outside of that, no, I've  
10 had no responsibilities related to  
11 interscholastic sports.

12 Q. So when you were a cross-country coach,  
13 what sorts of skills did you try to teach your  
14 students?

15 A. Well, there were the physical skills  
16 required to be an excellent runner, and then  
17 there were the team and, sort of, individual,  
18 kind of, psychological skills, I would say, in  
19 terms of persevering through hardship that are  
20 required in cross-country specifically.

21 Q. Anything else?

1           A.    No.  It was really, you know, the  
2           physical and, sort of, psychological elements,  
3           teamwork, as well.  You know, what does it mean  
4           to be a runner on the team?  What does it mean  
5           to be part of the team -- to support each other?

6           Q.    So you mentioned discipline, teamwork,  
7           responsibility, persevering through hardship.

8                    Anything else?

9           A.    I mean, life-long fitness.  You know,  
10          the role that staying fit and healthy plays  
11          in -- in your, sort of, overall wellbeing.

12          Q.    And these are skills that every student  
13          should learn, right, not just student athletes?

14          A.    I would argue, yes, all students need  
15          to understand, sort of, the emotional, physical  
16          connections and how to take care of themselves  
17          holistically.

18          Q.    Are you familiar with the Plaintiff in  
19          this case L.E.?

20          A.    Only so far as the deposition notice,  
21          not in any other capacity.

1           A.    No, I don't.  I think it's a high  
2 school student.

3           Q.    Do you know the student's sex or  
4 gender?

5           A.    I do not.

6           Q.    I want to talk a little bit about the  
7 state board of education.  I'm sure this is very  
8 complex, but can you describe to me the  
9 relationship between the board of education and  
10 the department of education?

11          A.    Certainly.  In Tennessee, not unlike  
12 other states, but specifically in our state, the  
13 governor appoints both the state board members  
14 and the commissioner of education.  The state  
15 board, according to the general assembly and the  
16 law that has, kind of, created the state board,  
17 is responsible for K12 policy and governance in  
18 Tennessee.

19                So our Board comes together, at least  
20 quarterly, to review and vote on regulation.  So  
21 rules and policies related to all kinds of things

1       that govern K12 education.

2               Under the statute, as well, we do not  
3       have implementation responsibility. That is what  
4       falls supposed to the department of education.

5               So we partner closely with them, both in  
6       terms of the drafting and presenting the rules  
7       and policies. Their staff, which is much more  
8       extensive than the state board staff and includes  
9       a lot of content experts, are often the one that  
10      present rules and policies to the Board.

11              Our staff partners with them in the  
12      reviews -- the review of those rules and policies  
13      before they get to the Board. And then the  
14      department is also the body that's responsible  
15      for implementation and working closely with  
16      districts to oversee and monitor implementation  
17      of the rules, laws, and policies.

18              Q.    Both the board of education and the  
19      department of education are state government  
20      entities, correct?

21              A.    Correct.

1 federal funds received by the Tennessee  
2 department of education; is that right?

3 A. I'm sure I follow your question  
4 completely. But to -- to restate what I think  
5 you're saying: The Board -- state board sets  
6 policy and rule regarding how districts are  
7 required to spend federal dollars, in some  
8 cases, like, Title 9 and others.

9 We do not set policy or rules regarding  
10 how the department of education spends federal  
11 dollars that they might receive. They are a  
12 separate and distinct agency.

13 So anything that we set, in terms of  
14 regulations, is specific to public schools and  
15 districts in Tennessee.

16 Q. Okay. That's a helpful clarification.

17 What's the relationship between the  
18 LEAs and the state board of education?

19 A. I believe by "relationship," you mean  
20 communication and interaction?

21 Q. Is there a legal or a reporting



1 relationship between the LEAs and the state  
2 board?

3 A. Not -- not broadly speaking.

4 Now -- and, again, that's why I think  
5 the distinction between the department of  
6 education and the state board is an important  
7 one.

8 Reporting and monitoring of district  
9 implementation of state board policies and rules  
10 is purely the function of the department of  
11 education.

12 So the way I would describe the  
13 relationship that the state has -- and when I say  
14 "board," I'm meaning our members, but also our  
15 staff, just generally speaking, as we talk -- is  
16 to engage with superintendents, in particular,  
17 educators, to understand how things are going,  
18 what issues they're encountering, to inform our  
19 policy and rules. But that's as part of the  
20 ecosystem that includes the department of  
21 education who's doing a lot more work on the

1 ground to monitor and oversee implementation.

2 So the relationship that we have with  
3 LEAs is about setting rules and policies, having  
4 relationships with those directors of schools, in  
5 particular, and educators to understand how  
6 things are going and where we might need to work  
7 with the department of education to make  
8 adjustments to our rules and policies.

9 But it's really, sort of, in that cycle  
10 of rule-making and policy-making that we have  
11 relationships with LEAs to inform their work.

12 Q. Who has -- or how are the state board's  
13 policies enforced at the LEA or school district  
14 level?

15 A. Well, it varies, according to, you  
16 know, the rule or policy, how much enforcement  
17 is required. But anything that's being  
18 monitored or, quote, unquote, enforced would  
19 happen through the department of education.

20 Q. And what are the mechanisms for  
21 enforcement?

1       ratifies it?

2           A.     No.

3           Q.     Okay.

4           A.     So the other -- the workflow is in the  
5       other direction.

6           Q.     Got it.

7                   Were you in attendance at the July 22,  
8       2022, state board of education meeting?

9           A.     I was.

10          Q.     Do you recall -- well, let me take a  
11       step back.

12                   I'm going to refer to the law at issue  
13       here as SB228. Is that -- do you understand  
14       what I'm referring to when I refer to "SB228" --

15          A.     I do. PC909 or PC40. Yes.

16          Q.     What are you referring to when you say  
17       "PC909" or "PC40"?

18          A.     Well, PC40 was the actual public  
19       chapter that SB228 became in 2021. And then  
20       PC909 was the updated version in 20- -- this  
21       past legislative session, 2022.

1           Q.    Okay.  What's the difference between  
2           the two public chapters that you're referencing?

3           A.    Well, one passed in 2021, and one was  
4           in 2022, and the 2022 legislation updated and  
5           added to PC40.

6           Q.    What are the substantive differences  
7           between the two versions of the statute?

8           A.    The first version spoke to, again,  
9           interscholastic sports and students  
10          participating, based on their sex at the time,  
11          of birth.

12                   And the second -- the subsequent update  
13          to that law required the state board to  
14          promulgate rules around the withholding of funds  
15          for noncompliance with that previous law.

16          Q.    Okay.

17                   MR. SCHOENFELD:  John, can you bring up  
18          the July 22, 2022, board minutes?

19                   MR. O'TOOLE:  Okay.

20          BY MR. SCHOENFELD:

21          Q.    Dr. Morrison, would you just let me

1 know when you have access to it?

2 A. Yep. Give me just a minute.

3 Okay. I've got it up.

4 Q. Okay. And you said you were at this  
5 meeting, correct?

6 A. Correct.

7 Q. Do you see item "N" on the agenda  
8 refers to "Interscholastic Athletics Rule 0520,"  
9 dash, "01," dash, "23"?

10 A. Hang on one second. I'm looking at  
11 item "N, First Reading"?

12 Q. Correct.

13 A. Yes, I'm with you. Uh-huh.

14 Q. And it refers to a "First reading of  
15 item to create an interscholastic athletics rule  
16 pursuant to public chapter 909 of the 2022  
17 legislative session," right?

18 A. Yes.

19 Q. Is this the first board meeting you can  
20 recall where SB228, or any of its iterations,  
21 was discussed by the Board?

1           A.    It is.

2           Q.    Do you recall any discussion with any  
3 board members, or among the Board, about SB228,  
4 prior to the July 20, 2022, board meeting?

5           A.    I do not.

6           Q.    Can you explain what a "first reading"  
7 is?

8           A.    Sure.  According to our meeting policy,  
9 we have two readings on most every rule and  
10 policy that comes before the Board.  The first  
11 reading is the attempt to look at a strong draft  
12 and get feedback from our board.

13                   And then subsequently, if it's a rule,  
14 feedback from the public, from other  
15 stakeholders, through the -- the rule-making  
16 hearing to make adjustments to that first reading  
17 language, prior to bringing it back before the  
18 Board for a final reading, at which point, once  
19 the Board votes, then that final version is what  
20 goes on to the secretary of state's office and to  
21 make laws.

1           Q.    Did you say "a strong version"? Was  
2           that the language you used?

3           A.    I wouldn't say -- it's a working draft.  
4           I mean, that first draft, again, our -- our team  
5           of staff members, as well as sometimes the  
6           department of education, depending on the actual  
7           item, works hard to ensure that what comes on  
8           the first reading represents our best work, our  
9           best effort.

10                But, again, it is a first reading;  
11           meaning, that it's subject to amendments,  
12           adjustments, feedback. It essentially starts a  
13           public conversation that results often in changes  
14           before final reading.

15           Q.    Does the staff preparing a first  
16           reading usually consult with outside  
17           stakeholders or collect input into the first  
18           version that's, then, given the first reading?

19           A.    Sometimes. Again, you know -- and you  
20           can see, based on that meeting, we'll have  
21           30-plus items coming before the Board. And some

1 items will have more engagement on the front-end  
2 than others, depending on the nature of the item  
3 and time line that we're working under.

4 Q. Okay.

5 MR. SCHOENFELD: John, can you put up  
6 the first reading?

7 BY MR. SCHOENFELD:

8 Q. And, Dr. Morrison, tell me when you  
9 have access to that.

10 (Off record discussion.)

11 THE WITNESS: I have it here.

12 BY MR. SCHOENFELD:

13 Q. Okay.

14 A. Just the cover sheet.

15 Q. So that was my question: "Is this the  
16 cover sheet?

17 A. This is the cover sheet. This is not  
18 the actual item.

19 Q. Where is the actual item found?

20 A. If you go back to the Meeting Agenda  
21 and click the link in the text describing the



1 item, that will be the actual item.

2 Q. Okay. So do you know who specifically  
3 prepared this cover sheet?

4 A. I believe it was our general counsel.  
5 But honestly, I'm not sure if this was prepared  
6 by -- and I don't know that for sure. It could  
7 have been the department.

8 Q. Okay. The first sentence says that:

9 "The portion of the Tennessee code  
10 requires LEAs to adopt or enforce  
11 policies to ensure students gender, for  
12 purposes of participation in a public  
13 middle school or high school  
14 interscholastic athletic activity or  
15 event be determined by the student's  
16 sex, at the time of the student's  
17 birth, as indicated on the student's  
18 original birth certificate."

19 What does "gender" mean in that  
20 context, and then what does "sex" mean in that  
21 context?

1 MS. BERMEYER: Objection to form.

2 THE WITNESS: My reading is that they  
3 are interchangeable, for all intents and  
4 purposes here.

5 Gender. I -- I -- guess you can -- let  
6 me -- let me just -- take one more chance to  
7 answer your question.

8 "To adopt and enforce policies to  
9 ensure a student's gender for purposes  
10 of participation in a public middle  
11 school or high school interscholastic  
12 activity be determined by the student's  
13 sex, at the time of birth."

14 Sex being male or female; again, in  
15 terms of anatomy and physiological  
16 characteristics at the time of birth.

17 Gender being what is construed to be  
18 that sort of sexual identification.

19 And in -- in this case, both need to be  
20 one and the same for the purposes of  
21 interscholastic activities at the middle, high

1 school level.

2 BY MR. SCHOENFELD:

3 Q. The Background Section, then, goes on  
4 to say that:

5 "Chapter 909 requires the  
6 commissioner to withhold a portion of  
7 the state education finance funds from  
8 the LEA that fails or refuses to  
9 comply" with the section we've just  
10 discussed; is that right?

11 A. Correct.

12 Q. Is it -- do most rules that the state  
13 board of education is required to implement have  
14 provisions like this one, providing for a policy  
15 for when an LEA fails or refuses to comply with  
16 the substance requirement?

17 A. No.

18 MS. BERMEYER: Object to form.

19 THE WITNESS: Not all of our rules  
20 require that. And I should say not every law  
21 requires that that be part of our rules.

1 BY MR. SCHOENFELD:

2 Q. Was there an expectation that LEAs  
3 would fail or refuse to comply with the law,  
4 when this was being drafted?

5 MS. BERMEYER: Object to the form.

6 THE WITNESS: That is, sort of, a, you  
7 know -- again, legislative intent, and I can't  
8 speak to that.

9 BY MR. SCHOENFELD:

10 Q. What's your understanding of why the  
11 state board of education was required to come up  
12 with a protocol to ensure compliance with the  
13 law and establish a procedure governing the  
14 withholding of state funds, due to  
15 noncompliance?

16 MS. BERMEYER: Object to form.

17 THE WITNESS: That's where, again, I  
18 think PC40 speaks for itself. The, sort of,  
19 preamble clauses are, to our best knowledge, the  
20 legislative intent behind this legislation and  
21 the requirement for these rules. But that's all

1 I can speak to, is my understanding of what was  
2 in that original law.

3 BY MR. SCHOENFELD:

4 Q. Then it says that:

5 "The state board staff will  
6 conduct a rule-making hearing between  
7 the first and final reading to collect  
8 public comments."

9 Has that happened?

10 A. No. It's scheduled, I believe, for  
11 September 15th. So a few weeks from now. Our  
12 next meeting will be at the end of October. So  
13 this -- this rule will be on final reading at  
14 that point in time.

15 Q. I apologize. You said that the  
16 rule-making hearing is schedule for sometime in  
17 September?

18 A. September 15th, I believe.

19 Q. Can you describe to me how that  
20 rule-making hearing actually happens?

21 A. Sure. It gets public noticed, in

1 education have any sort of formal influence over  
2 the Board's decision-making or the operation of  
3 the Board?

4 A. She does not.

5 Q. Does the state commissioner ever  
6 testify before the Board?

7 A. I wouldn't consider it testimony so  
8 much as she sits with the Board, because she's  
9 prepared to answer questions related to  
10 discussion of items that are before the Board.

11 Q. Does she attend board meetings?

12 A. She does.

13 Q. Okay. What's the relationship between  
14 the state board of education and the Texas  
15 Secondary School Athletic Association?

16 A. None. We are in Tennessee.

17 Q. Sorry. The relationship between the  
18 state board of education and the Tennessee  
19 Secondary School Athletic Association?

20 A. Again, "relationship" is sort of a  
21 vague term. But we have no authority under the

1 law, meaning the state board, to regulate or  
2 confer according to TSSAA, so.

3 Q. Is the TSSAA, insofar as you know,  
4 established by state law?

5 A. Correct.

6 Q. And it's established by a law of the  
7 general assembly?

8 A. Correct.

9 Q. And does it -- does the TSSAA have any  
10 relationship to the Tennessee department of  
11 education?

12 A. I can't speak to that in terms of their  
13 interaction. There's not a formal relationship  
14 that I'm aware of.

15 Q. Okay. And does the state board -- and  
16 you may have answered this question already, but  
17 does the state board have any role in overseeing  
18 the TSSAA?

19 A. We do not.

20 Q. Does the Board ever solicit input or  
21 information from the TSSAA?

1           A.     It's very rare that we have a rule like  
2     the one in question before the Board, but  
3     certainly, our board members may ask staff to  
4     engage TSSAA on something like this to get their  
5     input as part of the public feedback process,  
6     but that's the extent to which we would be  
7     interacting with the TSSAA.

8           Q.     And TSSAA promulgate rules the way the  
9     state board of education does?

10          A.     I'm not sure.

11          Q.     Is the TSSAA required to comply with  
12     any applicable rules that the board of education  
13     promulgates?

14          A.     Again, we don't have authority over the  
15     TSSAA, so I'm struggling to think of any rules  
16     that they would have comply with, other than --  
17     again, there were some things related to COVID  
18     that -- around sports and activities, but none  
19     that I'm aware of.

20          Q.     Okay. So in the area of  
21     interscholastic athletics, LEAs and their



1 schools are required to comply both with rules  
2 promulgated by the TSSAA and with rules  
3 promulgated by the state board; is that right?

4 MS. BERMEYER: Object to form.

5 THE WITNESS: They're -- they're  
6 required to abide -- abide by rules promulgated  
7 by the state board. I am not sure if the  
8 TSSA -- TSSAA promulgates rules in the same way  
9 that we do. But they are -- TSSAA is the  
10 governing body for sports in public schools in  
11 Tennessee.

12 BY MR. SCHOENFELD:

13 Q. Okay. Are you familiar with an  
14 organization called the "Ed Trust" --

15 A. I am --

16 Q. -- Ed Trust?

17 Sorry, let me -- I think we spoke over  
18 each other. Let me just ask the question again.

19 Are you aware with an organization  
20 called the "Ed Trust" or the "Education Trust"?

21 A. Yes.

1 Q. What is it?

2 A. It's a nonprofit advocacy group. It  
3 works nationally and in Tennessee.

4 Q. What sort of work do they do?

5 A. They're looking at all kinds of data  
6 and research related to K12 public education and  
7 often through an equity lens trying to ensure  
8 the best possible opportunities for all  
9 students.

10 Q. Does the Tennessee Board of Education  
11 interact with Ed Trust in any formal way?

12 A. Not in any formal way, but sometimes  
13 through our item-review process, certainly,  
14 yeah, in that way.

15 Q. What's the "item-review process"?

16 A. Well, as I mentioned, when things are  
17 up on first reading and between final reading,  
18 we get feedback from a number of stakeholders.  
19 Sometimes groups like Ed Trust are part of that  
20 process.

21 Q. Does the state board of education

1 from Ed Trust?

2 A. Tennessee --

3 MS. BERMEYER: Yeah, object to form.

4 THE WITNESS: -- Tennessee Board of  
5 Education's response, yes.

6 BY MR. SCHOENFELD:

7 Q. Okay. And does the state board of  
8 education ever get solicitations like this from  
9 Ed Trust or other researchers?

10 A. Well, again, the department of  
11 education is the body that oversees data system  
12 that are the subject of a lot of these requests.

13 In this case, I don't recall a similar  
14 request, from Ed Trust, about these content areas  
15 that are linked here. It would be possible that  
16 a group like Ed Trust could send something to us,  
17 and depending on the nature of request, we would  
18 either be able to fulfill it or we would refer  
19 them to the department of education.

20 Q. Okay. So if you --

21 MR. SCHOENFELD: John, can you post up

1 the Excel spreadsheet?

2 THE WITNESS: Okay. This one I may  
3 need to download. Wait just a second. It's  
4 hard to see. Okay. I haven't pulled it up --  
5 but I have it up here.

6 BY MR. SCHOENFELD:

7 Q. Okay. So you'll see on Sheet 1, it has  
8 certain criteria, and then information for a  
9 number of states. And on the second tab it  
10 says, "TDOE Feedback."

11 Do you see that?

12 A. I do.

13 Q. All right. So I'm interested in the  
14 tab called "TDOE Feedback."

15 Do you understand "TDOE" to mean  
16 Tennessee Department of Education?

17 A. Yes.

18 Q. Okay. And I'm focused on criterion 2E,  
19 which is in row 8.

20 Do you see that?

21 A. Yes, I do.

1           Q.    And it's asking about whether the state  
2           has policies in place that set the conditions  
3           for districts to ensure equitable and inclusive  
4           learning and extracurricular environments for  
5           K12 students.

6                   Do you see that?

7           A.    I do.

8           Q.    And the question of whether the state  
9           has such policies, would those policies, if they  
10          existed, be state department of education  
11          policies or state board policies?

12          A.    So the way they're using policies here,  
13          really, in our case, would be a rule, and that's  
14          the rule that we've been discussing. The only  
15          thing that we have in place is the one that's in  
16          the process of being promulgated.

17          Q.    Okay. So apart from the rule that  
18          we've been talking about, does the State of  
19          Tennessee have policies or rules in place to set  
20          conditions to ensure equitable and inclusive  
21          learning and extracurricular environments?

1           A.     So that's a broader subset of potential  
2 policies or rules. I mean, it talks  
3 anti-bullying and other elements of ensuring  
4 equitable inclusive learning.

5                     I'd have to review our own policies to  
6 tell specifically what things might fall under  
7 those categories. So --

8           Q.     Well, sitting here today, are you aware  
9 of any rules or policies that the state board of  
10 education has promulgated that are designed to  
11 ensure equitable and inclusive learning and  
12 extracurricular environments for students?

13           A.     That's a broad umbrella for policies  
14 and rules. And so, yes, I would argue, you  
15 know, things around, sort of, discipline and  
16 extracurricular, ensuring that students have  
17 access to rigorous course work. There are a  
18 number of things around educator quality that we  
19 have policies around that would fall under,  
20 again, ensuring that students have equitable  
21 inclusive environments for learning.

1           Q.    So what state boards and policies  
2           ensure equitable and inclusive extracurricular  
3           experiences?

4           A.    I don't know that we have -- again,  
5           this is not something that I have prepared for  
6           as part this deposition. So I am not prepare to  
7           tell you chapter and verse.

8                   Off the top of my head, I can't think of  
9           anything that speaks to extracurricular  
10          activities. I can think of things that are more  
11          relevant to course work around, again, ensuring  
12          some of those aspects of the environment for  
13          learning.

14          Q.    Okay. The second column is Ed Trust's  
15          input to this. And the third column is TDOE's  
16          feedback.

17                   The second column says that Tennessee,  
18          quote, "has discriminatory legislation barring  
19          gender affirming participation of transgender  
20          students athletes."

21                   Do you see that?

1           A.     I do.

2           Q.     What do you understand Ed Trust to be  
3 saying here about the legislation that's under  
4 consideration in this case?

5           MS. BERMEYER: Object to form.

6           THE WITNESS: I mean, I think their  
7 language speaks for itself. They're referring  
8 to same law that we've been discussing today.  
9 That is my understanding of that language.  
10 BY MR. SCHOENFELD:

11          Q.     Do you have any understanding of why  
12 they view it as discriminatory?

13          MS. BERMEYER: Object to form.

14          THE WITNESS: I'm not sure that that's  
15 relevant.

16 BY MR. SCHOENFELD:

17          Q.     What do you mean that's not relevant?

18          A.     Why would -- repeat your question, I  
19 guess I should say.

20          Q.     Sure. I think I said: Do you have any  
21 understanding of what they mean or why they view



1 the legislation as discriminatory?

2 MS. BERMEYER: Object to form.

3 THE WITNESS: Well, it says here, "Has  
4 discriminatory legislation barring gender  
5 affirming participation of transgender student  
6 athletes and only allows students to compete  
7 based on sex listed on an existing birth  
8 certificate."

9 So they are saying that to not allow a  
10 student who identifies as male or female but,  
11 you know, based on their sex, at birth, might  
12 be, you know, not the same as the gender  
13 identifiers that that is discriminatory. That's  
14 my understanding on what they're saying there.

15 BY MR. SCHOENFELD:

16 Q. And do you have any view as to whether  
17 that's an accurate characterization of the  
18 legislation?

19 MS. BERMEYER: Object to form.

20 THE WITNESS: I -- I don't have a view  
21 on that. I've been focused on implementing the

1 law as it's currently written.

2 BY MR. SCHOENFELD:

3 Q. Okay. What is the state board of  
4 education's role in promulgating the Tennessee  
5 Teacher Code of Ethics?

6 A. Well, it's -- again, I'd have to look  
7 back the statute the governs -- the Tennessee  
8 Code of Ethics, I have not done that in a while.  
9 But we have, in our rules and policies, a  
10 Tennessee Code of Ethics that we use primarily  
11 in relation to license or discipline cases.

12 Q. Has the Teacher Code of Ethics been  
13 revised, or adjusted, or considered during your  
14 tenure as executive director of the state board  
15 of education?

16 A. I believe that it has, but I can't tell  
17 you exactly when.

18 Q. Do you consult it routinely in the  
19 course of participating in licensure disputes?

20 A. We do reference it, for some of our  
21 cases, in licensure disciplinary conversations,

1 THE WITNESS: No. The Board is not  
2 aware.

3 BY MR. SCHOENFELD:

4 Q. Has the Board received any information  
5 in the course of the rule-making process about  
6 the number of transgender students participating  
7 in interscholastic sports or the number of  
8 students who may have been denied an opportunity  
9 to advance, as a result of the participation of  
10 transgender students in interscholastic sports?

11 A. We have not.

12 Q. Interrogatory No. 8 asks the Board to:

13 "Describe the impact of the  
14 participation of students who are  
15 transgender and interscholastic sports;  
16 what impact there's been on cisgender  
17 students including the safety of  
18 cisgender students who participate in  
19 interscholastic sports."

20 Are you aware of any impact that the  
21 participation of students who are transgender

1 and interscholastic sports in Tennessee has had  
2 on has -- had on non-transgender students  
3 playing interscholastic sports in Tennessee?

4 A. No, I have no knowledge or awareness of  
5 that.

6 Q. And has the Board made any efforts to  
7 ascertain what the impact of that participation  
8 is?

9 A. I'm not sure how we would do that; and,  
10 no, we have not.

11 Q. So as part of the rule-making process  
12 to implement this statute, the Board hasn't  
13 undertaken any efforts to figure out whether  
14 there would be an impact of having transgender  
15 students participate in interscholastic sports  
16 on non-transgender students?

17 A. No. That's outside the scope of what  
18 we're asked to do, under the law.

19 Q. Why is that outside the scope?

20 A. We're asked to promulgate rules  
21 specifically about the commissioner's ability to

1 withhold funds from LEA who did not comply with  
2 the law.

3 Q. I see. So your view is that the  
4 delegation to the Board relates exclusively to  
5 the enforcement of the statute and not the  
6 actual substantive requirements of the statute?

7 MS. BERGMEYER: Object to form.

8 THE WITNESS: I understand our  
9 responsibility related to this law to be about  
10 promulgating rules related to the commissioner's  
11 ability to withhold funds for non-compliance  
12 with this law. That really is the role of the  
13 Board, under that legislation.

14 Q. The first reading of the bill includes  
15 a provision requiring each local board of  
16 education and each governing body of a public  
17 charter school to adopt and enforce a policy in  
18 compliance with the statute and adopt written  
19 procedures to ensure proper implementation of  
20 the statute; is that right?

21 A. Correct.

1           Q.    And would those policies go to the  
2 Board for any kind of review?

3           A.    No, not LEA policies.

4           Q.    Who would review those for compliance  
5 with the statute?

6           A.    The department of education.

7           Q.    And if the department of education  
8 found that there was something deficient in the  
9 policy or procedure that the LEA adopted, would  
10 that information, then, come to the state board  
11 to reach a determination as to whether funding  
12 should be withdrawn from the LEA, or is that  
13 something that the department does to implement  
14 the policy that the state board has devised?

15          A.    Yes. The department would be purely  
16 the property of the state department of  
17 education, in terms of monitoring and enforcing  
18 those LEA policies and then the ability to  
19 withhold funds for non-compliance. That's not  
20 something that comes to the Board.

21           MR. SCHOENFELD: John, can you put up

CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

I, Dawn L. Halcisak, Court Reporter and Notary Public in and for the State of Maryland, the officer before whom the foregoing Remote Deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony given; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my direction and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 7th day of September 2022.

My commission expires:

At



NOTARY PUBLIC IN AND FOR THE  
STATE OF MARYLAND